

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

SHELDON NATHAN

PLAINTIFF

v.

CIVIL ACTION NO. 5:14-cv-119-MTP

CORRECTIONS CORPORATION OF AMERICA

DEFENDANT

ORDER

THIS MATTER is before the Court on the Order [67] of the United States Court of Appeals for the Fifth Circuit. On September 21, 2016, this Court entered its Final Judgment [52] dismissing Plaintiff's action with prejudice. On November 14, 2016, Plaintiff filed a Notice of Appeal [61]. The Notice of Appeal was dated October 17, 2016, but, as evidenced by the envelope that encased the Notice of Appeal, it was postmarked and mailed on October 27, 2016.

On February 22, 2017, the United States Court of Appeals for the Fifth Circuit directed this Court to determine whether the Notice of Appeal was deposited in the correctional institution's internal mail system on or before the last day for filing an appeal—October 21, 2016. This Court then directed the custodian of the legal mail log at the Marshall County Correctional Facility to furnish to the Court a copy of said log from October 17, 2016, through October 27, 2016. *See* Order [68].

In response to the Order [68], the Marshall County Correctional Facility provided the legal mail log from October 13, 2016, through November 2, 2016. *See* Response [70]. The mail log includes entries for "Sheldon Nathan" on October 27, 2016. The Court found that the mail log alone did not establish whether the Notice of Appeal was deposited in the internal mail system on October 27, 2016, or was simply mailed on that date. Accordingly, the Court directed each party to file a response, presenting argument and evidentiary materials establishing the date

on which Plaintiff deposited his Notice of Appeal in the Marshall County Correctional Facility's internal mail system.

On April 10, 2017, Plaintiff filed his Response [73]. Plaintiff does not state when he deposited his Notice of Appeal in the internal mail system, but appears to argue that the Notice of Appeal was timely.¹ However, Plaintiff also argues that even if the Notice of Appeal were untimely, he did not intentionally delay its filing. Plaintiff states that he was in administrative segregation prior to his release and "maybe" that was "a qualifying factor for the delayed response."

On April 19, 2017, Defendant filed its Response [75], along with an affidavit from Bernice Brown, the custodian of the legal mail log at the Marshall County Correctional Facility. In her affidavit, Brown states as follows:

When I receive the legal mail from an inmate I log the date I receive such mail on the "Inmate Legal Assistance Mail Log" in the first column for "Date." See MCCF Filing of Mail Log at 2 (Doc. #70). I then take the mail to the mail room for stamping and mailing. I always take the mail to the mail room for mailing on the same day I receive the mail from the inmate. In other words, I never hold legal mail overnight.

The "Inmate Legal Assistance Mail Log" for the period covering October 13, 2016 to November 2, 2016 shows that I received legal mail from Inmate Sheldon Nathan on October 27, 2016, which is the same day I send the mail out. See MCCF Filing of Mail Log at 3 (Doc. #70).

See Brown Affidavit [75-1] at 2.

Based on the materials filed of record, the Court finds that Plaintiff delivered his Notice of Appeal to prison officials for mailing on October 27, 2016. This case shall be

¹ Plaintiff states that he "filed a timely motion into the mailing system which is clearly out of his hands"

returned to the court of appeals for further proceedings, or dismissal, as may be appropriate.

SO ORDERED this the 25th day of April, 2017.

s/Michael T. Parker
UNITED STATES MAGISTRATE JUDGE